

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ZHIZHENG WANG,

Plaintiff,

v.

BRUCE HULL,

Defendant.

DECATHLON ALPHA III, L.P.,

Intervenor Plaintiff,

v.

ZHIZHENG WANG.

Intervenor Defendant.

NO. C18-1220RSL

ORDER GRANTING
DEFENDANT'S MOTION TO
COMPEL AND STAYING CASE

This matter comes before the Court on “Defendant’s Motion to Compel the Deposition of Plaintiff Zhizheng Wang.” Dkt. # 87. While attempting to schedule plaintiff’s video deposition, defense counsel learned that “China does not permit attorneys to take depositions in China for use in foreign courts” and that “taking depositions, whether voluntary or compelled, and obtaining other evidence in China for use in foreign courts may, as a general matter, only be

ORDER GRANTING DEFENDANT’S MOTION
TO COMPEL AND STAYING CASE - 1

1 accomplished through requests to its Central Authority under the Hague Evidence Convention.”
2 U.S. Dep’t of State Bureau of Consular Affairs China Judicial Assistance Information (2019),
3 [https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/China.ht](https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/China.html)
4 [ml](https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/China.html) (last visited June 19, 2020). The Chinese law on which the State Department advisory is
5 based, Article 277 of the Chinese Civil Law, provides that, except when coordinated in
6 conformity with international treaties to which China is a party, “no foreign authority or
7 individual is allowed to serve process, conduct investigation, or obtain evidence within the
8 borders of People’s Republic of China without permission” from the country’s Central
9 Authority.
10

11 Defendant, concerned that deposing plaintiff at his home in Beijing could expose
12 defendant, his attorneys, and support staff to sanctions under Chinese law, notified plaintiff that
13 the video deposition could not occur as previously contemplated and requested assistance in
14 formulating another plan. Plaintiff refused, arguing that defendant was bound by his prior
15 agreement to depose plaintiff at his home, that plaintiff’s testimony has only limited relevance to
16 this case, that defendant’s interpretation of Chinese law is in error, that defendant’s change of
17 heart is harassment designed to inconvenience plaintiff, and that forcing plaintiff, a 69 year old
18 man, to travel puts him at risk of COVID-19. Having reviewed the memoranda, declarations, and
19 exhibits submitted by the parties, the Court finds as follows:
20

21 Defendant’s interpretation of Chinese law is reasonable given the language of Article
22 277, the State Department’s advisory, and U.S. case law regarding Article 277. While there is
23 certainly a possibility that the Chinese authorities would construe the law narrowly so that it
24 does not apply to foreign individuals who do not set foot within the borders of the People’s
25
26

1 Republic of China and who have the cooperation of the Chinese citizen being deposed (*see* Dkt.
2 # 92 at 2), the Court will not require defendant to bet on that outcome. *See Ji v. Jling, Inc.*, 2019
3 WL 1441130, at *2, 4, and 6 (E.D.N.Y. Mar. 31, 2019) (having previously required plaintiff to
4 appear for deposition outside of China, the court struck his video-link trial testimony when it
5 was revealed on cross-examination that he was physically located in China because the
6 proceeding exposed the defense to legal sanctions).

8 Most of plaintiff's other arguments are likewise rejected. Defendant will not be held to a
9 prior agreement which unknowingly put him, his counsel, the court reporter, and other
10 participating foreigners in legal jeopardy. Nor can refusing to participate in a proceeding which
11 appears to violate Chinese law reasonably be considered harassment, especially where defendant
12 could have insisted that plaintiff appear in person in the jurisdiction where he chose to file this
13 lawsuit but is instead seeking only a location that is indisputably lawful. And, finally, plaintiff
14 has relevant information regarding at least two issues, standing and communications with
15 defendant, making his deposition appropriate.

17 With regards to the current health crisis caused by the novel coronavirus, defendant is not
18 demanding, and the Court will not require, that plaintiff board a flight for Seattle, Hong Kong,
19 Macau, Seoul, or Taipei immediately. But plaintiff will not be permitted to refuse to be deposed
20 while offering his declarations as evidence when it suits him. The Court recently denied
21 plaintiff's motion for summary judgment, leaving unresolved the standing issue and noting that
22 "[t]his determination is without prejudice to a motion for summary judgment directed at the
23 issue" of standing. Dkt. # 108 at 4. The dispositive motion deadline is July 7, 2020, and
24 defendant will not be required to file his motion until he has a chance to depose plaintiff without
25
26
27

28 ORDER GRANTING DEFENDANT'S MOTION
TO COMPEL AND STAYING CASE - 3

1 fear of criminal entanglements in China.

2
3 For all of the foregoing reasons, defendant's motion to compel plaintiff to appear for
4 deposition at a place where the parties can take his testimony without fear of reprisal by the
5 People's Republic of China - such as Seattle, Hong Kong, Macau, Seoul, or Taipei - and using
6 video conferencing software used commercially by court reporters is GRANTED. This matter is
7 hereby STAYED until the deposition can occur. If the parties are able to reach agreement and
8 conduct the deposition by July 1, 2020, the current case management schedule will be reinstated.
9 The parties shall submit a joint status report upon completion of the deposition.
10
11

12
13 Dated this 22nd day of June, 2020.

14 

15 Robert S. Lasnik
16 United States District Judge
17
18
19
20
21
22
23
24
25
26
27